is one of which the bar may well be proud. If nothing more, it has done much to elevate the standard of our profession, and to show that the rugged paths of legal science may be made beautiful by the graces of literature and humanity, at no sacrifice of practical usefulness and skill. We may point to Talfourd, as to some of the judges who have recently adorned the Courts of this country, as an illustrious proof that the practice of the law need neither blunt the feelings nor narrow the intellect.

RECENT AMERICAN DECISIONS.

In the Supreme Court of Pennsylvania.

THE COMMONWEALTH *vs.* JOHNSTON.

1. Special pleading before a Justice of the Peace, though not to be encouraged, is not unlawful, and when a defendant has pleaded specially, and the Plaintiff demurs to his plea, the facts therein alleged are regularly on the record, and become substantive ground of the judgment.
2. In a conviction under the Act of 22d April, 1794, for performing worldly employment on Sunday, it should appear what the work was for which the defendant was convicted, but as the whole record is to be taken together, it is sufficient if the description of the work appear in any part of it.
3. Driving an omnibus as a public conveyance daily and every day is worldly employment, and not a work of charity or necessity within the meaning of the Act of '94, and therefore not lawful on Sunday.
4. A contract of hiring by the month does not, in general, bind the hireling to work on Sundays, and if his work be such as the Statute forbids, an express agreement to perform it on Sunday will not protect him, for such a contract is void.
5. Though traveling does not in a legal sense fall within the description of worldly employment intended to be prohibited, yet the running of public conveyances on Sunday is forbidden by the Statute. BLACK, CH. J. and LEWIS, J. dissenting.

The following dissenting opinion was delivered by

LEWIS, J.—In assigning my reasons for dissenting from the opinion just pronounced by a majority, I beg to be understood as entertaining the utmost deference for their judgment and the

greatest respect for their zeal in the cause of religion and order. But I cannot bring my mind to assent to their views; and I do not believe that the object which they have at heart will be in any manner promoted by the rigid rules of construction adopted. Religion has never prospered by uniting itself with the State, and leaning upon earthly princes, potentates and powers, for support. On the contrary, it has prospered most when those powers have been arrayed against it. This position is so well established, that it has grown into an aphorism, that "the blood of the martyrs is the seed of the church." The union of Church and State can only be brought about by mutual concessions which result in a compromise of the interests of both. In all such unions, the party which happens to have the most power will invade the rights of the other. In the Sandwich Islands, where the missionary clergymen have chief influence over the Government, it is said to be against the law even to walk out of the house on the Sabbath day! While in England, where the King is the head of the Church, it was provided by statute in the reign of James the First, that the people should not be forbidden to indulge in what was called "such honest mirth or recreation" as "dancing, archery, leaping, vaulting, May games, whitsun ales, and morris dancing" on the Sabbath, after the hours of worship. (3 Burn's Just. 106.) And the clergy were compelled to cause the enactment to be publicly read in the churches. These are but illustrations of the evils of the union, and of the unjustifiable extremes to which it leads.

In trials before an alderman or a justice of the peace, the parties have as good a right to admit the facts and to demand judgment upon the law of their cases as they have in trials before any other tribunal. The statute which gives jurisdiction to the inferior magistracy does not deprive the parties of their legal rights in this respect. So, that by the demurrer to the fourth plea we have the facts of the case clearly admitted upon the record. By that plea it is stated that the defendant was doing "a work of necessity in this, that the omnibus to which the horses were attached is a vehicle for the public conveyance of persons traveling from Lawrenceville to Fifth street, in the city of Pittsburg, the distance of

three miles, daily, including Sunday; that the defendant was hired by the month, as a driver, by the proprietors; that he was engaged in fulfilling his contract in the public conveyance of persons traveling between the said points on Sunday, being a work of necessity and lawful, on that day *for the purpose aforesaid.*" The "*purpose aforesaid*" refers to the purpose stated in the previous pleading, which is thus made part and parcel of the fourth plea. That purpose, as thus stated and admitted by the demurrer, is "the traveling of persons to and from sundry churches, meeting-houses and places of divine worship which they are accustomed to attend on the Lord's day, commonly called Sunday, and to and from their houses and other places at and between said stations, to which said passengers are traveling upon their necessary business, and for the performance of their religious and charitable duties, and for health and recreation, on Sunday." It is thus admitted upon the record that persons who were traveling in the omnibus were engaged in a "work of necessity" and in "the performance of their religious and charitable duties." It follows that unless the act of traveling is so sinful or illegal in its nature as not to be justified by any "necessity," however urgent, or by any "religious or charitable duties," however sanctioned by the laws of God and man, the judgment ought to have been rendered in favor of the defendant below. But a different view of the case was taken by the alderman. The driver of the omnibus was convicted of violating the act of 1794, and he is now before us, asking for redress.

In *Commonwealth* vs. *Wolf*, 3 S. & R. 48, and in *Specht* vs. *Commonwealth*, 3 Barr, 321, it was decided that men who conscientiously believe that Saturday is the true Sabbath, were nevertheless liable to punishment under the act of 1794 for not observing the first day of the week. I regret that the Legislature of this Commonwealth have not, thus far, thought proper, to follow the example of Christian toleration which prevails in the adjoining States of New York, New Jersey and Ohio, in this respect. But, under the express provisions of the act, the construction adopted was inevitable; and in view of the Christian character and common usages of the people who established the government, there

is no difficulty in sustaining the statute as constitutional. It is not necessary that a usage should have existed from the first introduction of Christianity into England to give it the force of law. It is sufficient that the usage has been "long and immemorial, and has been universally accepted." This makes it a part of the common law, which is nothing more than common custom. By this long usage in the mother country, and subsequently in this Commonwealth, it is as well settled that Sunday is regarded as a day of rest as that we fix the date of events from the Christian era, and not from the flight of Mahomet. It was for this reason that in 1766 a judgment was reversed because it was entered on the Sabbath-day. (3 Bl. 272; 1 Inst. 356; 3 Burr. 1595; Dyer, 168.) That our ancestors brought this part of the common law with them at the settlement of the State is manifest from their Christian professions and practices, and from the provision in the Constitution, which excepts Sundays from the calculation in fixing the number of days allowed to the executive for the consideration of legislative bills. (Art. 2, Sec. 23.)

By the general grant of legislative power, the authority to compel the observance of a usage which had acquired the force of common law, and which those who made the grant had been accustomed to enforce by statute, and to consider within the limits of legislative authority, may be fairly implied. But the power to abrogate that usage and institute another which interferes with the rights and violates the consciences of the people, cannot be implied from anything contained in the Constitution. The Sabbath is a Christian institution, recognized by the common law and the Constitution, and *on this ground alone* have the Legislature the right to pass laws to enforce its observance. They have no right to substitute the Jewish for the Christian Sabbath, or to prevent the people from pursuing their business occupations on any other day, or on any number of days which they may arbitrarily designate; and I regret that the decision in *Specht* vs. *The Commonwealth* recognized a principle which seems to admit the existence of such a power. Mr. Justice Coulter placed that decision on the proper ground; and, although the opinion of Mr. Justice Burnside is not reported, his

concurrence with Judge Coulter, and his strong aversion to the principles adopted by the majority, are well understood. I make these remarks because I am unwilling to admit that the Christian usages of our ancestors have no influence upon the common law, and I am still more unwilling to acknowledge the existence of a power in the Legislature to disregard those usages, and to compel the people to observe the customs and ceremonies of Heathens, Jews or Mahometans, instead of them.

The Saviour, after his crucifixion and resurrection, gathered his eleven disciples together upon the mountain in Galilee, and commissioned them to "go and teach all nations." Considering that this was essentially the voice of God himself, it is not to be supposed that the Creator, or his chosen missionaries, were ignorant of the law of his own creation, by which the Sabbath cannot commence and terminate with "all nations" at the same instant of time, but necessarily varies with the degrees of latitude and longitude. When it is Sunday morning at Jerusalem it is evening in the Sandwich Islands. When it is Sunday at noon in Philadelphia, it is midnight in China. The territory lying between the Red Sea and the Persian Gulf, where the commandment to keep the Sabbath was delivered to the children of Israel, enjoys the alternations of day and night every twenty-four hours, while in some parts of the Polar circles these alternations occur only once a year. His direction to "the children of Israel" to keep the seventh day of the week "for a covenant," and "as a sign between their Creator and themselves forever," therefore, could not have been intended to exclude such modifications in the time and manner of observing the day, as the necessities of other nations in different locations on the globe, require. In view of this necessity, the fundamental principle was affirmed by the Saviour, that "the Sabbath was made for man and not man for the Sabbath." The selection of any particular period of twenty-four hours was, therefore, not of vital importance. All that was required by the spirit of the institution was that one-seventh part of the time should be set apart for worship and rest. The first day of the week was the day on which God created the Heaven and the earth, and was also the day on which the

Saviour arose from the dead. That this day was substituted for the seventh by those entrusted with full power to teach all nations the new dispensation, is a fact established by the usage introduced by their authority and example, and continued for eighteen hundred years. It is, therefore, too late to raise a question in regard to the appropriate day. So far, at least, as this Commonwealth is concerned, it has been settled so long that the "memory of man runneth not to the contrary."

Those who had authority from God to deliver the glad tidings of salvation to mankind, and to change the day for the observance of the Sabbath, had also authority from the same high source, to direct by precept and example, the manner of keeping it. That they did make a change in the *manner* of keeping the Sabbath is as well established as that they changed *the day*. Under their instructions and example, it was no longer regarded as a breach of the commandment for any man to "go out of his place on the seventh day," because the Saviour and his disciples went about on that day teaching, exhorting, and healing the sick. It was no longer a capital crime to pick up food, or to "gather sticks on the Sabbath," for those who were hungry were allowed to gather corn to satisfy their wants. Num. 15: 32; Mat. 12: 1. It was no longer a violation of the law under all circumstances to "bear any burden" on the Sabbath: for when the man who was healed of an infirmity of thirty and eight years' standing, was told by the Jews that it was not lawful for him to "carry his bed" on the Sabbath day, his plea was unanswerable; "He that made me whole, the same said unto me, take up thy bed and walk." Jer. 17: 21; John 5: 11. It was no longer a crime to "kindle a fire in a habitation," Ex. 35: 3, nor to "bake nor to seethe" on the Sabbath day, Ex. 16: 23, for he that was the Lord of the Sabbath had declared that "the Sabbath was made for man, not man for the Sabbath." Mark 2: 27. Even under the elder dispensation, the injunction that no one "should go out of his place on the Sabbath," had undergone a modification to suit the change of circumstances, and traveling on Sunday was allowed to the extent of what was called "a Sabbath day's journey." We are told that immediately after the ascension,

"the disciples returned into Jerusalem from the Mount called Olivet, which is from Jerusalem *a Sabbath day's journey.*" Acts 1: 12. The Jews, with all their disposition to find fault with the Saviour and his disciples, made no charge against them for traveling on Sunday, for they knew that by their own law and usage that was allowed within certain limits. Hence their charges against the man who was carrying his bed, and against those who went through the corn, were not that they were *traveling*, but that one was "*bearing a burden*," and the others *gathering corn* on the Sabbath.

In the spirit of the Saviour's doctrine and practices, the act of 22d April, 1794, was passed, and it certainly ought to be expounded by the Courts in the same spirit. In that spirit let us consider the question before us. The act prohibits "worldly employment or business, works of necessity and charity only excepted." Is traveling regarded as "worldly employment or business" within the meaning of the act? The statute of 29 Carr. 2, c. 7, prohibited the exercise of "worldly business, labor, or work of their ordinary callings on the Lord's day, works of necessity and charity only excepted." But these words were not regarded as prohibiting persons from traveling in their ordinary callings, and therefore, in the second paragraph of the statute, it was expressly provided that no drover, horse courser, wagoner, butcher, higler, or their servants, shall *travel* or come to his inn or lodging, nor shall any person use, employ or travel with any boat, wherry, lighter or barge, without permission from a justice. (1 Hawk. C. C. 14.) These provisions had a manifest relation to persons traveling in their ordinary employment or business, and yet they were deemed necessary, because the words "worldly employment" in the previous part of the statute, were not regarded as prohibiting *traveling* on Sunday. This is strong evidence that the same words, as used, in the act of 1794, were not understood as prohibiting traveling, and the omission of the provision against it, such as is contained in the second paragraph of the English statute, is strong evidence that the Legislature did not intend to prohibit it. In several of the States, where it was the intention to prohibit traveling on Sunday, it has been done in express terms. In New York the prohibition of any "ser-

vile labor or working" was not supposed to include traveling, and a distinct provision was inserted for that purpose (1 Rev. Stat. 675); and in Massachusetts the prohibition against "any manner of labor, business, or work," was not deemed sufficient to embrace traveling, and accordingly there is a separate provision on that subject in the statute of that State (Mass. Rev. Stat. 385). This shows that the act of locomotion has never been regarded as "worldly employment or business," unless it be in the exercise of the ordinary employment of the party charged. That our own Legislature, at the time they enacted the law of 1794, did not intend to prohibit traveling on Sunday, is manifest from the provision in the nature of a judicial exposition of the meaning of the act.

In that proviso, it is declared that the Act shall not be construed to prohibit the dressing of victuals (which includes the "baking and seething" prohibited by the Jewish law,) in private families, bake houses, lodging houses, inns, and other houses of entertainment, for the use of sojourners, *travelers*, or strangers, or to hinder watermen from landing their *passengers*, or ferrymen from carrying over the water *travelers*, or persons removing with their families." If these were inserted as exceptions in the body of the enacting clause, the rule of "*expressum facit cessare tacitum*" might be urged for the purpose of reducing us to the extremity of holding that the Sabbath was to be observed upon the *land*, but not upon the *water*—and that ferrymen and watermen might work at their oars, poles, or other means of propulsion, in their "worldly employment "all day, in carrying persons "over the water," and in "landing them;" but the driver of a stage coach or an omnibus, who allowed them to get into his vehicle and conveyed them to their places of destination, was guilty of a criminal violation of the law! We might thus be compelled to insult the common sense of the community, by holding that those who were landed upon the shore of a lake or river on Sunday, were bound to remain there, exposed to the inclemency of the weather until Monday; or, if disposed to adhere to the letter, and disregard the spirit of the act, we might adopt a construction still more objectionable, because of its injustice

and inequality: we might say that the Legislature intended that those who are rich enough to possess wagons and carriages of their own, may proceed on their journey; but the poor, who are only able to pay for their conveyance in a public stage, or in an omnibus, must not be allowed this privilege, but must remain on the shore until Monday morning! We might declare, in the most solemn manner, that this is according to Christian morality, and is a true exposition of the statute, but who will believe either the one or the other of these propositions? Will any one believe that the enlightened, pure and holy teachings of the Saviour of mankind give countenance to the idea that the rich are to be favored and the poor oppressed in this way? It seems to me that the sanction, by a Christian Court, of a rule of law which leads to such a result, is all that the infidel and scoffer at Religion could desire for *their purposes.* That they are, at this moment, rejoicing at the prospect before them, is as certain as that we are considering and deciding this momentous question. That this is but an entering wedge, and that the majority on this bench will be forced either to carry out the principle to other cases, or abandon it altogether, is equally certain. If carried out to all the cases to which it necessarily applies, the interference with the comforts of life, the molestation of peaceable and orderly citizens in their lawful movements, and the unjust and odious inquisition into their motives and their private affairs, will be so intolerable as to produce a re-action which will do more harm to the cause of Religion, than all the good it ever derived from its connection with the State.

In the *King* vs. *Cox*, *E.* 32 G. 2, cited in 3 Burn's Justice, 109, it was held that "baking puddings, pies, and other such things for dinner," was within the exception of "works of necessity and charity," and also "*within the equity of the proviso in favor of baking meat.*" This is an authority to show that even in the construction of an exception in the act against Sabbath breaking, we are not to be driven by intemperate zeal into a channel so narrow and dangerous as the mere letter of the statute, but that in expounding it we must be governed by the same rules which control us in the construction of all other statutes. Whatever is within the

equity of a statute is within the statute itself, and whatever is within the equity of an exception is within the exception itself. As the observance of the Sabbath is as obligatory upon the *water* as upon the *land*, as the morality and good order of society is as much promoted by enforcing its observance against ferrymen and watermen, as against coachmen and stage and omnibus drivers, and as it would be a ridiculous absurdity, as well as a monstrous injustice, to permit travelers to be carried over rivers and other streams on Sunday, and to be landed, but to prohibit them from leaving the landing, although they may be cold, hungry and unsheltered, it necessarily follows that traveling on land is within the equity of the proviso.

But, as already stated, the proviso in our statute, is, strictly speaking, no part of the statute itself. It is merely an appended exposition of its meaning, so far as regards the particular cases which are enumerated, and which we are bound to presume were all the cases that happened to occur at the time to the Legislature. They doubtless omitted stage coaches, because the few that were then running, were employed in the transportation of the U. S. Mail, and it was unnecessary to make an exception in their favor, because no one supposed that the State authority had the power to obstruct the transportation of the mail carried under the authority of the general government. Omnibus traveling was of course not thought of, because the rapid progress of our country, in her march of improvement, had not yet brought these useful vehicles into existence. It is true that the Legislature are not clothed with judicial power to give a construction to acts of assembly, and therefore the proviso which expounds the statute is not binding upon the Courts; but it serves to show that the Legislature never intended the act of 1794 to be used for the purposes to which it is applied in this case. Like any other exposition of the meaning of a statute, its effect is to sanction any other acts of like character with those enumerated. "*Ratio est anima legis.*" Reason is the soul of the law, and where the reason is similar, the law is the same. A decision which sanctions the carrying "over the water" and the landing of "travelers and passengers" necessarily implies the legal propriety

of traveling and passing, and that it is lawful to approach the shore on the one side of the stream, and to depart from it on the other. The provision in favor of speeding them on their way is a plain recognition of the principle that traveling is not "worldly employment or business" within the meaning of the statute.

Five years after the statute was passed, the U. S. Circuit Court, sitting in Pennsylvania, evinced its respect for the Sabbath by refusing to sit on Sunday, although a jury was empanneled in a capital case; but the same court, while the statute was fresh in the recollection of all, *permitted the jury to be taken in a carriage into the country for recreation.* *U. S.* vs. *Fries*, 3 Dallas 515. In *Jones* vs. *Hughes*, 5 S. & R., 299, it was expressly decided that traveling was not "worldly employment" within the meaning of the act of 1794, although the transportation of merchandise as a business, was. In *Logan* vs. *Matthews*, 6 Barr, 417, it was held, in accordance with this principle, that the hiring of a carriage on Sunday was a legal contract. It is true that the hiring was by a son who intended to visit his father, but as his father was not sick, and no unusual necessity for a Sunday visit was shown, the case stands upon the general principle that traveling or locomotion is not "worldly employment" within the meaning of the prohibition. The eloquent remarks of the judge who delivered the opinion in regard to the filial duties of a son to a father are but the flowers with which that distinguished jurist was accustomed to strew his path. If the case had been that of a visit by a father to a son—a husband to his wife, a brother to a sister, or a lover to his intended wife, we might have seen the same rhetorical decorations. There may be different degrees of urgency between the visit of a lover to his betrothed, and that of the clergyman who comes to unite them in marriage—between the visit of a physician to a sick patient, and that of a minister of the Gospel to a dying sinner—between the quiet and orderly movement of an industrious operative who has been confined in a close shop all week, and who takes a cheap ride in an omnibus into the country for the purpose of healthful recreation, and the Sunday ride of a dashing young student or clerk, who is able to hire a carriage for the purpose of paying a visit to his

father. But the law has not authorized the arrest of travelers on their journeys, for the purpose of instituting an inquisition into their motives. Such a proceeding has been regarded as so odious, if not so fruitless and impossible, that although the statute has been in existence more than half a century, the practice has never been sanctioned; but, on the contrary, has been repudiated by the courts and by the common usages of the people. The idea of stopping an omnibus, a stage coach, a steamboat, or a train of railroad cars, for the purpose of ascertaining what number of the passengers are traveling for proper and necessary purposes, and arresting those who are not, is now for the first time in the history of this Commonwealth, suggested. I say that this idea is now suggested, because there is no reasonable way to enforce the principle of the decision without it. It is unreasonable to arrest in their progress those who are urged on by the duties of attending worship, or a funeral, or offering medical or clerical aid to the sick and dying, because others are in the same vehicle who have no such urgent reasons for their movements; and yet this must be done if the driver of an omnibus, or the engineer who has charge of a locomotive, is to be arrested and punished, as is proposed to be done in this case. It cannot be pretended in the face of these repeated decisions and the uninterrupted usage of the people and the government, that traveling is "worldly employment or business" within the meaning of the act of 1794. Fanaticism in her wildest phrenzy has not been able to establish this position. The decisions of the Court, the uninterrupted practice of the State government in the management of her canals and railroads, and the habits of her citizens, have been in constant opposition to it. But it is contended that, although the passengers in the omnibus have a right to proceed peaceably on their way to their churches for worship, to the cemetery to drop a tear over the remains of their friends, to the country to breathe the fresh air and recruit their health, or to any other place of destination, yet the driver, because it is his "worldly employment," has no right to drive the horses which draw the vehicle. And this is the pin's point on which this great question of moral reform is to be impaled by its own friends! Can any reasonable man be misled by such

indirection as this? Can any one suppose it to be a sound and just administration of the law to subvert and destroy the acknowledged right of locomotion by such a construction? The right is established and acknowledged, but the means of enjoying it are cut off! If this principle were asserted by an obscure attorney in relation to any other subject, it would meet with nothing but derision. It is contrary to a rule as old and well established as the law itself. "Where the law doth give anything to one, it giveth implied by whatsoever is necessary for enjoying the same." Co. Litt. 56. The accessories go with the principle. As traveling is lawful, the agents who do no more than render the necessary aid in such lawful act, cannot be guilty of any crime. It is no answer whatever to this objection to say, that the agents are following their "worldly employment." The same may be said of every person employed in supplying the necessary demands of humanity, from the physician who assists in bringing us into the world, to the grave-digger who renders his aid as we go out of it. Where is this to end? The coachman who drives an aged or sickly family of females to church, is pursuing his "worldly employment." The hired man who takes care of the horses and cattle of his employer, is pursuing his "worldly employment." All the domestics who minister to the daily necessities of a family, are pursuing their "worldly employment." Every one of these persons is as justly liable to punishment as is the present defendant. None of them, except those who dress victuals, are expressly mentioned in the exceptions of the statute, nor in the proviso. Their only justification is that which ought to sustain the defendant here. They are aiding in the performance of acts not within the meaning of the prohibition, and are therefore guilty of no crime. This principle was undoubtedly affirmed in the case of *Logan* vs. *Thomas*, 6 Barr, 417. The plaintiff was a keeper of a livery stable, and was allowed to recover on a contract for the hire of a horse and carriage on Sunday, notwithstanding the hiring of the horse and carriage was in the course of his "worldly employment." The action could be sustained on no other principle than that which ought to be equally effective as a defence here. The proposed journey, not being unlawful, it was no crime to furnish

the means necessary for performing it. So, in England, the owner of a stage coach was held liable to an action for neglecting to convey a passenger on Sunday, according to contract, although the carriage of passengers was not only his worldly employment, but was his "ordinary business. *Sardeman* vs. *Breach*, 7 Barn. & Cress. 96. Apply this principle to the transportation of the United States Mail. It is conceded that the State authorities have no power to stop it; but if it be true, as now alleged, that the lawfulness of the act does not sanction the use of the necessary means of performing it, we might punish the driver of the coach which contains it. And what would this be but obstructing the United States government in the exercise of its legitimate functions? If we attempted this, our error would be corrected by the Supreme Judiciary of the Union without the least hesitation. We would soon be made to understand that the right to a thing carries with it the right to all the necessary means of enjoying it. Why, then, shall we not apply the same principle to the case before us? The right to go from Lawrenceville to Pittsburg is not denied. The right to the means of performing the journey must therefore be undeniable.

Now, that the selling of liquor on Sunday is prohibited, there can be no great evil in permitting the laboring man, whose health is exhausted by toil and close confinement in the dust and impure air of his shop, to take a cheap ride in an omnibus into the country, where his health and spirits may be renewed by the fresh air that he breathes, and the green fields that delight his eye and rejoice his heart. This is a luxury that is not denied to the rich man (although he stands in less need of it), because he can go in his own carriage. Why, then, shall it be denied to the poor man, to whom it is more than a luxury? I cannot sanction a construction which leads to such injustice, partiality and oppression.

I would recommend it to every Christian to avoid all unnecessary traveling on Sunday; but if the steamboats, railroad cars, post coaches and private carriages are permitted to run on Sunday—if the National and State governments sanction the running of cars and coaches on that day, I see no reason for denying the owner of the omnibus the same privilege. Let equal and exact justice be

administered to all. Let us not, in our zeal for the cause of religion and morals, run ahead of all knowledge and understanding. Let us not, by judicial legislation, enact a new law which never had any existence before. Let us give no countenance to a principle of construction which is unreasonable in itself, and which tends to favor the rich and to oppress the poor.

I concur with the Chief Justice in the opinion that the judgment of the alderman ought to be reversed.

Court of Appeals of the State of New York, April, 1854.

JOHN HENDRICKSON JR., PLAINTIFF IN ERROR *vs.* THE PEOPLE, DEFENDANTS IN ERROR.

1. The testimony of a person examined as a witness before a coroner's jury, such person not being at the time under arrest, or charged with crime, may be given in evidence against him, on his subsequent trial for the alleged murder of the deceased.
2. The witness in such case, stands on the same footing as the witnesses examined on the trials of issues. He is not bound to criminate himself, and may decline to answer as to whatever tends to do so; but if he fail to avail himself of his privilege, his answers will be deemed voluntary, and may be given in evidence against him. It is only when he is compelled to answer after having declined to do so, that the answer will be deemed compulsory and will be excluded.
3. On the trial of a prisoner for the murder of his wife, the prosecution was permitted to introduce in evidence, the will of the father of the deceased, by which it appeared that the testator devised all his property to his wife for life, and after her death, to his three children; the son to take one half, and the deceased and her sister, each one fourth, *held:* that such evidence was properly admitted, as bearing upon the question of motive.

The prisoner was convicted at the Albany Oyer and Terminer, of the murder of his wife, and on writ of error to the Supreme Court the judgment, was affirmed. The case was then removed by writ of error to this Court. The questions relied upon, are sufficiently stated in the opinion of the Court.

J. K. Porter, for plaintiff in Error.

H. Harris, (District Attorney,) for defendant in Error.

The opinion of the Court was delivered by

PARKER, J.—The wife of Hendrickson died on Sunday, the 6th